

**Vincent Nominees Pty Ltd v Western Australian Planning Commission [2102] WASC 28.**

**FACTS**

Vincent Nominees Pty Ltd ("Vincent") and Western Australian Planning Commission ("WAPC") entered into a contract to sell two lots of land. The dispute relates to Lot 8, where WAPC had only paid 75% of the market price.

WAPCs position was that it was not required to pay the full price of the lot because it had already paid for 25% as a result of a compensation payment made by its predecessor. Vincent sought to rely on previous correspondence to interpret the contract despite its terms.

**ISSUE**

Can correspondence prior to a contract being entered into be used to give context and construe the meaning of that contract.

**FINDING**

Beech J found, among other things, that earlier correspondence cannot be used to construe a contract.

The provisions on the contract must be used to determine the intent of the parties. Beech J referred to Mason J in *Codelfa Construction v State Rail Authority*, where it was held that evidence of correspondence prior to contract can be held admissible to interpret ambiguous language but not if the language was plain.

**QUOTE**

Beech J at [43]:

*"correspondence cannot be used to give the contract of sale a meaning that, read as a whole and in context its language cannot bear. The instrument must be read in its context, but it is the instrument that is to be construed. Reference to the context is not a license to rewrite the contract to include provisions reflecting what the court infers from the background facts to have been intended by the parties"*

**IMPACT**

When in negotiations with another party as to contractual terms and obligations, it is vital for parties to ensure that all the relevant terms agreed during negotiation are adequately recorded within the contract.

A party will not be able to later construe the contract based on correspondence prior to the formation of the contract.